

WAYNE VAN DYKE

IBLA 80-214

Decided April 8, 1980

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. AZ MC 3833 (952).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

43 CFR 3833.1-2(a) states that the owner of an unpatented mining claim, millsite, or tunnel site on Federal lands on or before Oct. 21, 1976, shall file (file shall mean being received and date stamped by the proper BLM office) on or before Oct. 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. The depositing of a copy of the document in the mail does not constitute a "filing" within the context of the regulation.

APPEARANCES: Wayne Van Dyke, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 17, 1979, Wayne Van Dyke submitted copies of three location notices for the Wampum, War Drum, and Silver Bow lode mining claims with the Phoenix, Arizona, State Office, Bureau of Land Management (BLM). The documents bear the notation that they were received by BLM on October 26, 1979, together with the \$15 filing fee.

On November 20, 1979, BLM issued a decision declaring the claims abandoned and void because they were not filed in the BLM office by October 22, 1979, as required by section 314 of the Federal Land Management and Policy Act of 1976 (FLPMA), 43 U.S.C. § 314 (1976), 43 CFR 3833.1-2(a), and 43 CFR 3833.4(a). Wayne Van Dyke, locator of the claims, has appealed from this decision.

[1] The information filed by appellant indicates that the date of location of the Wampum, War Drum, and Silver Bow claims is July 2, 1968. Accordingly, under 43 CFR 3833.1-2(a), the owner was required to file a copy of the official record of the notice of location for each of the claims in the proper BLM office on or before October 22, 1979. Under the regulation "file" means being received and date stamped in the proper State BLM office.

The depositing of a copy of the document in the mail does not constitute a "filing" within the context of the regulation. "Filing" is defined at 43 CFR 3833.1-2(a). The section states that "file shall mean being received and date stamped by the proper BLM office." Thus, under 43 CFR 3833.1-2(a), appellant was required to "file" this information in BLM's Arizona State Office, i.e., to cause it to be received and date stamped there, on or before October 22, 1979.

Appellant claims that he submitted this information on October 13, 1979, prior to this date, although the envelope was postmarked October 17, 1979. Regardless of the date the instruments were deposited in the mail, they were not actually received and date stamped in the proper BLM office until October 26, 1979. ^{1/} As this was 4 days after October 22, 1979, BLM properly declared the claim abandoned and void, as required by 43 CFR 3833.4(a).

Under 43 CFR 3833.4(a), failure to file such instruments as are required by sections 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void. See C. F. Linn, 45 IBLA 156 (1980).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{1/} The delay in delivery was probably due to the fact that appellant addressed the envelope simply "Bureau of Land Management, Phoenix, Arizona," omitting the specific address of the office as well as the zip code.

